

Attorney Docket: 990667/RSB

**IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

Applicants : Ludwig WILDT et al.

Serial No. : 09/403,940

Filed : January 12, 2000

For : DEVICE FOR DETERMINING
FLUCTUATIONS IN END
EXPIRATORY GASES, METHOD
FOR DETERMINING FLUCTUATIONS
IN RESPIRATORY METABOLISM AND
THE USE OF SAID DEVICE

Art Unit : 1743

Examiner : GAKH

**PETITION FOR REVIVAL
UNDER 37 CFR 1.137(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

MAIL STOP PETITION

CERTIFICATE OF MAILING

I hereby certify this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to:
Commissioner for Patents,
P.O. Box 1450
Alexandria, VA 22313-1450
on the date noted below.

Richard S. Barth

Attorney: Richard S. Barth

Dated: JUNE 5, 2003

In the event that this Paper is late filed, and the necessary petition for extension of time is not filed concurrently herewith, please consider this as a Petition for the requisite extension of time, and to the extent not tendered by check attached hereto, authorization to charge the extension fee, or any other fee required in connection with this Paper, to Account No. 06-1378.

ATTENTION: OFFICE OF PETITIONS

S I R :

The above-identified application became abandoned for failure to file a timely reply to the August 29, 2001 action by the United States Patent and Trademark Office. The August 29, 2001 Office Action set a one-month period for response, i.e., September 29, 2001. The date of abandonment is the day after the expiration date of the period set for reply in the Office Action.

APPLICANTS HEREBY PETITION FOR REVIVAL OF THIS APPLICATION.

06/10/2003 CKHLOK 00000045 09403940

X RE:2453

650.00 OP

RECEIVED
JUN 10 2003

OFFICE OF PETITIONS

1. Petition Fee

Small Entity status has been asserted for the above-identified application in a paper filed on January 12, 2000.

A check for the Small entity fee of \$650 (37 CFR 1.17(m)) is enclosed. If any further fees are required, please charge such fees to Deposit Account No.06-1378.

2. Reply

An AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT is being filed concomitantly herewith and is a reply to the above-noted Office Action.

3. Unintentional Delay

a. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

b. Background Facts

(1) The inventors of this application are Ludwig WILDT, Peter LICHT and Matthias MICHEL.

(2) In an Assignment executed on December 23, 1999 and December 20, 1999, respectively, by Peter LICHT and

Matthias MICHEL (Assignment recorded on January 12, 2000 at Reel 010520, Frame 0590), co-inventors LICHT and MICHEL assigned their rights in this application to Ludwig WILDT.

(3) The undersigned attorney has corresponded with German patent attorney Dr. Cornelia Neidl-Stippler of Munchen, Germany concerning the prosecution of this application. Dr. Cornelia Neidl-Stippler has corresponded in turn with Ludwig WILDT concerning the prosecution of this application.

c. Applicants have informed the undersigned of the following facts concerning the unintentional delay with respect to filing a reply in response to the August 29, 2001 Office Action.

(1) Ludwig WILDT first became aware of the abandonment of the above-identified patent application on April 16, 2003 at a conference with a licensee.

(2) Due to problems in his employment situation, Ludwig WILDT, who is a professor in the medical field, and has, in the meanwhile, changed the university he is

working for, was unaware of letters from the German patent attorney (Dr. Cornelia Neidl-Stippler) of February 2002 and March 2002 concerning the abandonment of the case. Due to the fact that Professor WILDT had to change offices and, to remove his voluminous paperwork, the February 2002 and March 2002 letters from the German patent attorney (Dr. Cornelia Neidl-Stippler) appear to have been misplaced.

(3) Professor WILDT has now changed his working relationship and is presently working in Innsbruck, Austria. The German patent attorney (Dr. Cornelia Neidl-Stippler) had problems contacting Professor WILDT during this period, so that the German patent attorney (Dr. Cornelia Neidl-Stippler) has not been able to give the undersigned attorney earlier instructions with respect to reviving the application. Professor WILDT's secretary was diligent in attempting to inform Professor WILDT of the receipt of documents regarding this application and, nevertheless, as a result of Professor WILDT's professional changes that took place in the last year and until now, it should be apparent

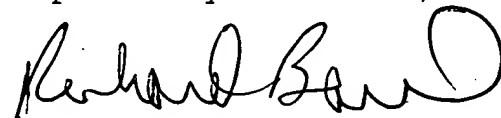
that the aforesaid correspondence has been mixed-up
and was not been properly recognized by Professor WILDT.

4. Conclusion

In view of the above-described circumstances, the granting
of this Petition and the restoration of the application to active
status are respectfully requested.

Frishauf, Holtz, Goodman
& Chick, P.C.
767 Third Ave., 25th Floor
New York, NY 10017-2023
Tel. Nos. (212) 319-4900
(212) 319-4551/Ext. 219
Fax No.: (212) 319-5101
E-Mail Address: BARTH@FHGC-LAW.COM
RSB/ddf

Respectfully submitted,



Richard S. Barth
Reg. No. 28,180

Encs.: (1) Check for \$650

(2) AMENDMENT AND RESPONSE TO RESTRICTION REQUIREMENT

RECEIVED
JUN 10 2003

OFFICE OF PETITIONS